

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-25, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1, 3-5, 9-11, 13, 15-17, 21-23, and 25 have been objected because of informalities. Claims 1-25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by USP № 6,445,688 ("Garces").

The Applicant respectfully traverses these rejections at least based on the following remarks.

#### **I. Examiner's Response to Arguments**

The Examiner states the following in the Final Office Action:

With regard to claim 1, Applicant states that "Garces does not disclose or suggest at least the limitation of 'receiving a response from said at least one of a plurality of access points, said response reporting a presence of at least one access device located within a coverage area of said at least one of a plurality of access points'". Response under 37 CFR 1.111, p.14, line 12-15. Applicant further states that "the synch response 216 only indicates to the remote device K1 110, that the WAP device L1 130 can send information to the remote device Ka 110.... In this regard, the synch response 216 does not report back to the remote device K1 110 a presence of at least one access device located within a coverage area of the WAP device L1 130." Response under 37 CFR 1.111, p.15, lines 13-15. However, Examiner respectfully disagrees. The synch response tells the remote device that the WAP is active to send information to the remote

device. To be active, the WAP has to be present. Therefore, the synch response reports a presence of the WAP.

See the Final Office Action at page 2. The Applicant respectfully disagrees. As stated in the October 20, 2008 response, the Examiner has equated Applicant's "at least one of a plurality of access points" to Garces' WAP device L1 130. Furthermore, the Examiner has equated Applicant's "response" to Garces' sync response 216. **The issue here is whether or not the sync response contains information and is reporting a presence of an access device that is located within the coverage area of the WAP device L1 130. Whether or not "WAP is active to send information to the remote device" (as stated above by the Examiner) is irrelevant. As explained in the October 20, 2008 response, the synch response 216 of Garces only indicates to the remote device K1 110, that the WAP device L1 130 can send information to the remote device K1 110. See Garces at col. 4, ll. 26-37. *The sync response does not report a presence of any access device that is located within the coverage area of the WAP device L1 130, where such access device is not co-located with the WAP L1 130 (i.e., the access device is different from the WAP L1 130). Claim 1 is, therefore, allowable.***

## II. Claim Objections

Claims 1, 3-5, 9-11, 13, 15-17, 21-23, and 25 have been objected because of informalities. More specifically, the Final Office Action states:

With regard to claims 1, 4, 5, 10, 11, 13, 16, 17, 22, 23, Examiner suggests removing all slashes and replacing them with the word "and" or "or" accordingly. With regard to claims 3, 9, 15, 21, 25, Examiner suggests removing one of the double "said" in line 2.

See Final Office Action at page 3. The Applicant respectfully disagrees and points out that the use of "and/or" is permissible under the circumstances. For example, if the claim recites "selecting one or more of A, B, C, and/or D", then "and/or" is used to indicate that practically any combination or subset of A – D can be selected.

In reference to the double "said", the Applicant points out that claim 2 recites "at least one of said plurality of access points within whose coverage ..." Subsequently, claim 3 repeats this entire term again and, therefore, "said" is placed in front of "at least one of said plurality of access points..." to designate proper antecedent basis.

At least for the above reasons, the Applicant submits that no further correction is required and the objection to claims 1, 3-5, 9-11, 13, 15-17, 21-23, and 25 should be withdrawn.

## **REJECTION UNDER 35 U.S.C. § 102**

### **III. Garces Does Not Anticipate Claims 1-25**

The Applicant now turns to the rejection of claims 1-25 under 35 U.S.C. 102(b) as being anticipated by Garces. With regard to the anticipation rejections under 102, MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference.” See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See *id.* (internal citation omitted).

**A. Rejection of Independent Claims 1, 7, 13, 19, and 23**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(b), the Applicant submits that Garces does not disclose or suggest at least the limitation of “receiving a response from said at least one of a plurality of access points, said response reporting a presence of at least one access device located within a coverage area of said at least one of a plurality of access points, said at least one access device not co-located with said at least one of a plurality of access points,” as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

With regard to claims 1, 7, 13, 19, 23, Garces discloses

...

receiving a response (a sync response) from said at least one of a plurality of access points (WAP device L1130), the response reporting a presence of at least one access device (indicating WAP device 130 can send information) located within a coverage area (see Fig. 1) of said at least one of a plurality of access points (WAP device L1130 after receipt of a broadcast sync packet 212 from remote device K1 110 sends back a sync response 216 indicating WAP device 130 can send information to remote device K1110, col. 4, lines 33-38);

See the Final Office Action at pages 3-4. The Examiner is relying on col. 4, ll. 33-38 of Garces. Referring to FIGS. 1-2 of Garces, the Applicant points out that after the remote device K1 110 broadcasts a synch packet, the WAP device L1 130 (equated by the Examiner to Applicant's "said at least one of a plurality of access points") sends back to the remote device K1 110 a synch response 216 (equated by the Examiner to Applicant's "response"). However, the synch response 216 of Garces only indicates to the remote device K1 110, that the WAP device L1 130 can send information to the remote device K1 110. See Garces at col. 4, ll. 26-37. **In this regard, the synch response 216 does not report back to the remote device K1 110 a presence of at least one access device located within a coverage area of the WAP device L1 130, where such access device is not co-located with the WAP L1 130 (i.e., the access device is different from the WAP L1 130).**

Therefore, the Applicant maintains that Garces does not disclose or suggest at least the limitation of "receiving a response from said at least one of a plurality of access points, said response reporting a presence of at least one access device located within a coverage area of said at least one of a plurality of access points, said at least one access device not co-located with said at least one of a plurality of access points," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Garces and is allowable. Independent claims 7, 13, 19, and 23 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent

claims 7, 13, 19, and 23 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-6, 8-12, 14-18, 20-22, and 24-25**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 7, 13, 19, and 23 under 35 U.S.C. § 102(b) as being anticipated by Garces has been overcome and request that the rejection be withdrawn. Additionally, claims 2-6, 8-12, 14-18, 20-22, and 24-25 depend from independent claims 1, 7, 13, 19, and 23, respectively, and are, consequently, also respectfully submitted to be allowable.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-25.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-25 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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